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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,883	08/25/2003	Michael Christensen	71-830-1	1032
7590 08/13/2004				
Steven W. Weinrieb SCHWARTZ & WEINRIEB Crystal Plaza One, Suite 1109 2001 Jefferson Davis Highway Arlington, VA 22202			EXAMINER HARTMANN, GARY S	
			ART UNIT	PAPER NUMBER
			3671	
DATE MAILED: 08/13/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/646,883	<b>Applicant(s)</b> CHRISTENSEN ET AL.	
	<b>Examiner</b> Gary Hartmann	<b>Art Unit</b> 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,7,8,14,27,28,30 and 31 is/are rejected.
- 7) ☒ Claim(s) 6,9-13,15-26 and 29 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/25/3</u> . | 6) <input type="checkbox"/> Other: ____.  |

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## **DETAILED ACTION**

### ***Specification***

The abstract of the disclosure is objected to because it is a run-on type sentence.

Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7, 8, 14, 27, 28, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eigenmann (U.S. Patent 4,792,259).

Eigenmann discloses an array of spaced pavement markers (A) fixedly disposed upon a release liner (B). Eigenmann does not show the means for conveying, means for depositing or means for forming; however, all of these means would have been necessary in order to obtain the product of Eigenmann. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used these means in order to manufacture the product of Eigenmann.

It is not clear if the markers are elongated; however, elongated markers are well known. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used elongated markers with Eigenmann in order to obtain a marker suitable for a

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particular application. Regarding additional recitation particularly related to an extrusion process, these are means commonly used in extrusions. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used these means in order to manufacture the markers of Eigenmann by extrusion, as is well known in the art.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used servo drives to indexably move the release liner in order to obtain the marker spacing shown by Eigenmann.

It is well known to use a programmable logic controller in manufacture. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a PLC with Eigenmann in order to efficiently control marker placement on the liner.

There are adhesive patches on the release liner.

There are reflective surfaces on Eigenmann. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used means for conveying strips and means for conveying protective material in order to obtain the reflective surfaces of Eigenmann.

Given the assembly of Eigenmann, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a means for conveying the pavement markers to the assembly station in order to be capable of making the final product.

Regarding the method steps, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used these steps in order to manufacture the product of Eigenmann.

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*Allowable Subject Matter*

Claims 6, 9-13, 15-26 and 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Hartmann whose telephone number is 703-305-4549. The examiner can normally be reached on Monday through Friday, 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Gary Hartmann  
Primary Examiner  
Art Unit 3671